

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the)	
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use)	CC Docket No. 96-115
of Customer Proprietary Network)	
Information and Other)	
Customer Information)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	
)	
Provision of Directory Listing Information)	
Under the Telecommunications Act of 1934,)	CC Docket No. 99-273
As Amended)	
)	
TO: The Commission)	

**OPPOSITION TO PETITION OF SBC COMMUNICATIONS INC.
FOR CLARIFICATION OR RECONSIDERATION
REGARDING DIRECTORY ASSISTANCE AND OPERATOR SERVICES**

INFONXX, Inc. ("INFONXX"), by its attorneys, hereby submits these comments in opposition to the Petition for Clarification or Reconsideration Regarding Directory Assistance and Operator Services filed by SBC Communications Inc. in the above-referenced proceeding.¹

¹ Petition of SBC Communications Inc. for Clarification or Reconsideration Regarding Directory Assistance and Operator Services, *In re Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115 (Oct. 27, 1999) ("SBC Petition").

Although the *SBC Petition* was not listed in the Commission's original Public Notice of petitions for reconsideration filed in this proceeding, see Public Notice, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Report No. 2374 (Nov. 24, 1999), or in the later correction to the Public Notice, see Public Notice, Correction to Petitions for Reconsideration or Clarification of Action in Rulemaking Proceedings, Report No. 2374 (Dec. 3, (continued...))

The *SBC Petition* asks the Commission to clarify that the duty of local exchange carriers (“LECs”) under Section 251(b)(3) of the Communications Act (the “Act”) to provide requesting LECs with nondiscriminatory access to operator services and directory assistance (“OS/DA”) does not include an “unbundling obligation” regarding OS/DA adjunct features, including customer information databases. SBC further requests that the Commission “reconcile” its rules under Section 251(b)(3) with the *UNE Remand Order* governing incumbent LECs’ obligations under Section 251(c)(3) of the Act by eliminating any Section 251(b)(3) OS/DA “unbundling obligations” to the extent that the *UNE Remand Order* eliminates ILECs’ obligation to offer OS/DA as an unbundled network element under Section 251(c)(3).

INFONXX urges the Commission to reject SBC’s request.² The Commission’s decisions interpreting Section 251(b)(3) implement a distinct statutory obligation separate from any unbundling obligation imposed under Section 251(c)(3). Although the rules implementing the two obligations may at one point have operated to similar effect, a Commission decision narrowing the scope of the obligation under Section 251(c)(3) does not require or justify a concomitant elimination of the Commission’s separate requirement implementing the ongoing nondiscriminatory access obligation under Section 251(b)(3).

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1999), INFONXX submits this opposition in accordance with the deadlines established in the corrected Public Notice to ensure that INFONXX’s views are taken into account when the Commission considers the petitions for reconsideration filed in this proceeding.

² INFONXX takes no position on the *SBC Petition*’s request that the Commission clarify that LECs are permitted to resolve “multiple and competing” requests for DA listing information on the same “nondiscriminatory basis” that they resolve such requests for subscriber listing information under Section 222(e) of the Act. *SBC Petition*, at 3-4.

DISCUSSION

Section 251(b)(3) of the Act, as amended by the Telecommunications Act of 1996, imposes on all local exchange carriers “[t]he duty to provide dialing parity to all competing providers of telephone exchange service and telephone toll service, *and* the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.” 47 U.S.C. § 251(b)(3) (emphasis added). In adopting rules implementing the latter of these duties, the Commission concluded that the obligation to provide nondiscriminatory access to operator services and directory assistance necessarily includes an obligation to provide access to OS/DA “adjunct features (*e.g.*, rating tables or customer information databases) necessary to allow competing providers full use of these services.”³ With respect to directory assistance databases in particular, the Commission concluded that competing service providers would be assured of nondiscriminatory access to directory assistance only if they have, *inter alia*, full access to LECs’ directory assistance database information in readily-accessible electronic, magnetic tape or other format specified by the requesting LEC to permit the competing provider to offer competitive directory assistance from its own platform.⁴

The Commission’s conclusions concerning the scope of the “nondiscriminatory access” obligation under Section 251(b)(3) are well-supported, and the *SBC Petition* does not

³ Second Report and Order, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 19392, 19445-46 (1996) (“*Local Competition Second Report and Order*”); *see also*, Second Order on Reconsideration of the Second Report and Order, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-227, ¶ 138 (rel. Sept. 9, 1999) (“*Local Competition Second Reconsideration Order*”).

⁴ *See Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61; *Local Competition Second Reconsideration Order*, ¶¶ 152-153.

challenge the conclusions on their merits. Instead, SBC contends that “it is possible to argue that” the requirements the Commission imposed in implementing the nondiscriminatory access provision “reaffirm[] or impose[] an obligation to provide separate unbundled access [to] OS/DA adjunct features.”⁵ SBC objects to the imposition of such an “unbundling” obligation under Section 251(b)(3). SBC argues that the Commission may impose unbundling obligations only under Section 251(c)(3) of the Act and only in accordance with the “necessary and impair” test of Section 251(d)(2).⁶

The error in SBC’s *Petition* is twofold: it seeks to have the Commission ignore plain statutory language and it relies on conclusory labels instead of sound arguments. The Commission’s rules implementing Section 251(b)(3) do not impose an “unbundling” requirement governed by Section 251(c)(3). As described above, the rules impose obligations that properly implement Section 251(b)(3)’s express statutory requirement that LECs afford competing providers with nondiscriminatory access – equal to the access they provide to themselves and other competing providers – to their operator and directory assistance services. Although the effect of these access requirements may appear similar to some of the unbundling requirements imposed under Section 251(c)(3), this does not mean that the access requirements are subsumed within – or limited to the same extent as – the unbundling requirements. Congress expressly addressed access to directory assistance and directory listing in Section 251(b), and the Commission has a statutory obligation to implement these provisions. As the Commission and the courts have recognized, all provisions in a statute must be given full force and effect.⁷

⁵ *SBC Petition*, at 6.

⁶ *SBC Petition*, at 6-9.

⁷ *See, e.g.*, 2A Sutherland Stat. Const. § 46.06 (5th ed. 1992 rev.) (“A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or

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Therefore, Section 251(b)(3) must be implemented in its own right, separate and distinct from any requirements imposed under Section 251(c)(3).

That Congress adopted statutory provisions in the Telecommunications Act that have some overlapping effect is not surprising. Section 251(b) imposes obligations on all LECs and was designed to ensure that certain rules (resale, access to directory assistance and directory listing, number portability) would apply across-the-board. Congress then imposed, in Section 251(c), “Additional Obligations” on ILECs that complement and, in some areas, go beyond the minimum obligations of Section 251(b). For instance, whereas Section 251(b)(1) requires a LEC to permit resale, Section 251(c)(4) contains more detailed resale obligations applicable to ILECs. Similarly, though the provisions of Section 251(c) may affect an ILEC’s provision of directory assistance or directory listing, that does not authorize the Commission to read Section 251(b)(3), which applies to all LECs, out of the statute. The two provisions are complementary and offer separate and independent grounds for Commission action. Accordingly, the rules adopted pursuant to Section 251(b)(3) should not be modified or altered because of changes in the rules under Section 251(c)(3).⁸

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superfluous”); *Williams v. United States*, 503 U.S. 193, 202 (1992) (instructing reviewing court to conduct two inquiries under two provisions of statute “[i]n order to give full effect to both provisions”).

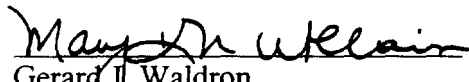
⁸ Even if the Commission accepted SBC’s invitation to “reconcile” its rules under Section 251(b)(3) with the *UNE Remand Order*, see *SBC Petition*, at 2, the Commission would not then be required to eliminate the requirement that LECs provide nondiscriminatory access to their DA databases. Although the *UNE Remand Order* eliminated ILECs’ obligation to offer OS/DA services as an unbundled network element, it retained the requirement that ILECs provide unbundled access to OS/DA databases. See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, Exec. Summ. & ¶¶ 400-420 (rel. Nov. 5, 1999) (“*UNE Remand Order*”).

CONCLUSION

In accordance with the foregoing, INFONXX urges the Commission to reject the *SBC Petition* and affirm its conclusion that LECs' obligation under Section 251(b)(3) of the Act to provide nondiscriminatory access to operator services and directory assistance encompasses a distinct statutory obligation to provide requesting providers with access to OS/DA adjunct features and directory assistance database information.

Respectfully submitted,

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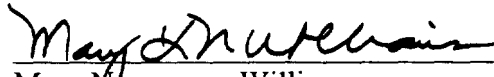
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January 11, 2000

CERTIFICATE OF SERVICE

I, Mary Newcomer Williams, certify that on this 11th day of January, 2000, I caused a copy of the foregoing OPPOSITION TO PETITION OF SBC COMMUNICATIONS INC. FOR CLARIFICATION OR RECONSIDERATION REGARDING DIRECTORY ASSISTANCE AND OPERATOR SERVICES to be served by first-class mail, postage prepaid, on the following:

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